

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-04-288 LKK KJM P

vs.

JOSEPH FERRARI,

Movant.

FINDINGS AND RECOMMENDATIONS

Movant, a federal prisoner proceeding pro se, has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. On August 16, 2008, respondent filed a motion to dismiss; movant has not filed an opposition to this motion.

Local Rule 78-230(m) requires that opposition to motions filed in prisoner cases be filed within twenty-one days and further provides: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" On November 25, 2008, movant was ordered to file an opposition within thirty days and advised that the failure to do so could be the basis for an order recommending that the action be dismissed. Fed. R. Civ. Pro. 41(b). The thirty day period has now elapsed and movant has not filed an opposition to the motion or otherwise responded to the court's order. This lack of response should be deemed a failure to prosecute.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. The motion to vacate sentence (docket no. 64) be dismissed for failure to prosecute; and
2. The Clerk of the Court be directed to close Civ. No. 08-728 LKK KJM P.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: January 16, 2009.


U.S. MAGISTRATE JUDGE